RSC Republican Study Committee

REP. TOM PRICE, M.D. (R-GA), CHAIRMAN
PAUL TELLER, EXECUTIVE DIRECTOR
424 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515

rsc.price.house.gov
ph (202) 226-9717 / fax (202) 226-1633

Legislative Bulletin……………………………………..………December 9, 2009

Contents:

Key Conservative Concerns

Take-Away Points

--**Negative Impact on Economy:** The legislation is another element of the Democrat agenda that will place new costs on businesses. The legislation will ration capital and credit, and place new red-tape on job creators, leading to further job losses.

--**Harm to Small Businesses:** The legislation will exacerbate the credit crunch for small businesses, who will have more difficulty accessing necessary credit because they would be required to pay fees to the government to bailout their competitors.

--**Wage Controls:** H.R. 4173 allows regulators to determine compensation of all employees (not just executives) at financial institutions.

--**Permanent Bailout Fund:** The legislation creates a pre-funded $150 billion bailout fund which is paid for by all financial institutions with assets over $50 billion and hedge funds over $10 billion.

--**Delegates Very Broad Authority to Federal Regulators:** The legislation gives federal regulators *very* broad authority to carry out and to promulgate regulations for the provisions of the legislation. The shape of the regulations that will result, and the cost this will impose on the private-sector, is unknowable. Many conservatives may believe that Congress should not delegate such vast authority to unelected regulators.

--**Creates New Consumer Financial Protection Agency:** The CFPA would have very broad authority in at least two respects. First, it would cover a broad range of non-traditional financial services industries. Any business which provides loans, credit, or repayment plans would be regulated, including: doctors and hospitals, student loans, defined-benefit pension plans, merchants and retailers, realtors, consumer credit reporting agencies, telephone service providers, advertising agencies, publishers, and cable and satellite TV companies. Second, H.R. 4173 leaves most future regulations (in title IV of the bill) to the discretion of the CFPA, instead of prescribing specific regulations.

--**Does NOT Include Needed Reforms of Fannie Mae and Freddie Mac:** The legislation does NOT make needed reforms of the GSEs (such as contained in H.R. 7094 from the 110th Congress, the Government-Sponsored Enterprises Free Market Act).

For more details on these concerns, see below.

H.R. 4173 — Wall Street Reform and Consumer Protection Act of 2009 *(Frank, D-MA)*

Order of Business: The House may begin consideration of the H.R. 4173 on Wednesday, December 9, 2009. The rules committee has reported out a general debate rule, which provides 3 hours of debate. The rule waives all points of order against consideration of the bill except for Clause 9 (earmark disclosure) and 10 (PAYGO) of Rule XXI.

The rule also self-enacts a *245-page* amendment to the bill. Among other things, this amendment:

- Reduces remaining TARP authority by $20.8 billion.
- Adds a revised version of H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act. See the RSC legislative bulletin for this legislation here. A version of this legislation passed the House on May 7, 2009 by a vote of 300-114.

It is expected that a separate rule governing amendment debate will be reported out of the Rules Committee later. The RSC will analyze all amendments made in order in a subsequent document.

Summary:

Title I—Financial Stability Improvement Act

Title I of the bill creates a new consumer Financial Services Council, made up of existing regulators, to decide which companies are "too big to fail." The Council is also authorized to determine which companies should be bailed out (i.e. resolved). This determination can be made prospectively, without the need for exigent circumstances. Once the Council decides to bail out a financial company, the FDIC takes over and winds down these companies. This gives the FDIC unlimited authority to make loans, guarantee debt and obligations, sell or transfer assets, and remove management.

Title I also gives the Federal Reserve unlimited and unchecked authority to regulate "too big to fail" companies at will with no standard measure for regulation. Areas of regulation include capital requirements (risk weighted and countercyclical), limiting interactions between a company and their counterparties, and any other standard the Federal Reserve deems appropriate.

This title of the bill also creates a pre-funded, $150 billion bailout fund which, is paid for by all financial institutions with assets over $50 billion and hedge funds over $10 billion. An additional

$50 billion can be borrowed from the Treasury. This is a new fee the FDIC can levy on financial companies.

Highlights of Title I:

Financial Services Oversight Council: The legislation establishes a Financial Services Oversight Council to consist of:

- The Treasury Secretary (Chairman of the Council);
- The Federal Reserve Chairman;
- The Comptroller of the Currency;
- The Director of the Office of Thrift Supervision;
- The Chairman of the Securities and Exchange Commission (SEC);
- The Chairman of the Commodities Futures Trading Commission (CFTC);
- The Federal Deposit Insurance Corporation;
- The Director of the Federal Housing Finance Agency; and
- The Chairman of the National Credit Union Administration.

The Council is also to have two nonvoting members serving in an advisory capacity: a state insurance commissioner and a state banking supervisor.

The duties of the council are as follows:

- To advise the Congress on financial domestic and international regulatory developments;
- To identify potential threats to the stability of the United States financial system;
- To identify potential threats to the stability of the United States financial system that do not arise out of the financial services marketplace;
- To develop plans to prepare for the above threats;
- To subject financial companies and financial activities to stricter prudential standards in order to promote financial stability and mitigate systemic risk;
- To issue formal recommendations that a Council member agency adopt stricter prudential standards for firms it regulates;
- To monitor international regulatory developments, including both insurance and accounting developments, and to identify those developments that may conflict with the policies of the United States or place United States financial services firms or United States financial markets at a competitive disadvantage;
- To facilitate information sharing and coordination among the members of the Council regarding financial services policy development rulemakings, examinations, reporting requirements, and enforcement actions; and
- To provide a forum for discussion and analysis of emerging market developments and financial regulatory issues among its members.

The Council is given the authority to resolve disputes between two or more federal financial regulatory agencies if:

- A federal financial regulatory agency has a dispute with another federal financial regulatory agency about the agencies' respective jurisdiction over a particular financial company or financial activity or product (excluding matters for which another dispute mechanism specifically has been provided under federal law);
- A disputing agency cannot, after a demonstrated good faith effort, resolve the dispute among themselves;
- Any of the federal financial regulatory agencies involved in the dispute provide all other disputants prior notice of its intent to request dispute resolution by the Council.

The legislation requires the Council to decide disputes after receiving the dispute resolution request, and to either agree with one of the disputants regarding the entirety of the matter or to determine a compromise position.

The Council is authorized to issue regulations requiring stricter prudential standards for firms it regulates to mitigate systemic risk. Specifically, the bill allows a federal financial regulatory agency to require reports regarding (and examine for compliance with) the firms it regulates to mitigate systemic risk. The legislation requires a federal financial regulatory agency to, within 60 days of receiving a Council recommendation, notify the Council in writing regarding: 1) the actions the financial regulatory agency has taken in response to the Council's recommendation, additional actions contemplated, and timetables or 2) the reason the federal financial regulatory agency has failed to respond to the Council's request.

The Council may subject a financial company to stricter prudential standards if the Council determines that:

- Material financial distress at the company could pose a threat to the financial stability of the economy; or
- The nature, scope, size, scale, concentration, and interconnectedness, or mix of the companies activities could pose a threat to financial stability or the economy.

The legislation includes an emergency exception if the Treasury Secretary, the Federal Deposit Insurance Corporation (FDIC), and Board determine that a financial company must be subjected to stricter prudential standards immediately to "prevent destabilization of the financial system or economy." In such a case the corporation may, upon approval of the President, subject such a company to stricter prudential standards.

The bill requires the Board to specify for each relevant capital measure the levels at which a financial holding company subject to scrutiny is well capitalized, undercapitalized, or significantly undercapitalized.

The legislation sets up a process requiring any undercapitalized financial holding company subject to stricter standards to submit an "acceptable" capital restoration plan to the Board within the time allowed by the Board.

The Board would require each financial holding company subject to stricter standards incorporated or organized in the United States to report periodically to the Board on:

1. Its plan for rapid and orderly resolution in the event of severe financial distress;
2. The nature and extent to which the financial holding company subject to stricter standards has credit exposure to other significant financial companies; and
3. The nature and extent to which other significant financial companies have credit exposure to the financial holding company subject to stricter standards.

Stress Tests: The legislation allows the board to conduct stress tests of financial companies that are not financial holding companies subject to stricter standards. The Board is to publish a summary of such stress tests. The legislation requires the Board to issue regulations to define the term "stress test" with three different conditions under which a stress test should be constructed.

Limits on Executive Pay for Financial Companies Subject to Stricter Standards: The legislation prohibits a company subject to stricter standards from paying any bonuses to senior executive officers or providing compensation to any senior executive officer at a rate exceeding that officer's average rate of compensation during the previous 12 months.

Mitigation of Systemic Risk: If the Council determines that despite the higher prudential standards, the size of a financial holding company subject to stricter standards poses a "grave threat to the financial stability or economy of the United States" (to be judged per criteria established in the bill), the Council shall require one of the following actions:

- Terminating one or more activities;
- Imposing conditions on the manner in which a financial holding company subjects to stricter standards conducts one or more activities;
- Limiting the ability to merge with, acquire, consolidate with, or otherwise become affiliated with another company;
- Restricting the ability to offer a financial product or products;
- Selling, divesting, or otherwise transferring business units, branches, assets, or off-balance sheet items to unaffiliated companies;
- Any other factors identified that the Council determines appropriate.

The legislation requires mitigatory action imposed by the Council to receive the approval of the Treasury Secretary if it leads to a sale in an amount above $10 billion. The approval of the President is required if the sale is above $100 billion.

Stricter Prudential Standards for Financial Stability Purposes: The Council may subject a financial activity or practice to stricter prudential standards if the Council determines that the "conduct, scope, nature, size, scale, concentration, or interconnectedness of such activity" could lead to problems in the financial system or economy. The legislation requires the Board to recommend prudential standards to the appropriate primary financial regulatory agencies.

Restriction on Proprietary Trading: The legislation allows the Board to prohibit proprietary trading if the Board determines that it "poses an existing or foreseeable threat to the safety or soundness of such company or to the financial stability of the United States."

Accounting for Risk by the Federal Deposit Insurance Corporation (FDIC): The legislation requires any assessment of any insured depository institution to be an amount equal to the product of the assessment rate established by the Corporation and the amount of the insured depository institution's average total assets during the assessment period minus the amount of the insured depository institution's average tangible equity during the assessment period. H.R. 4173 also requires the reserve ratio designated by the Board of Directors to be not less than 1.15 percent of estimated insured deposits.

Asset-Backed Securitization Process: The legislation requires, within 180 days of enactment, that the appropriate agencies prescribe regulations to require any creditor that makes a loan to retain an economic interest in a material portion of the credit risk of any such loan that the creditor transfers, sells, or conveys to a third party.

Representations and Warranties in Asset-backed Offerings: The legislation requires the Securities and Exchange Commission (SEC) to issue regulations on the use of representatives and warranties in the asset-backed securities market that:

- Require credit rating agencies to include in reports accompanying credit ratings a description of the representations, warranties, and enforcement mechanisms available to investors and how they differ from representations, warranties, and enforcement mechanisms in similar issuances; and
- Require disclosure on fulfilled repurchase requests across all trusts aggregated by originator, so that investors may identify asset originators with clear underwriting deficiencies.

Systemic Risk Resolution: Upon a determination by the Secretary, the Secretary is required to appoint a Corporation as a receiver for the covered financial company. An insolvent financial company may be resolved if it is determined that the failure and resolution of the company would be systematically destabilizing, as determined by the federal regulatory agency and the Secretary of the Treasury (in consultation with the President).

The legislation requires any liquidation costs that exceed the amount of liquidated assets of the company to be paid through assessments on large financial companies.

The legislation allows the Corporation to (with the approval of the Secretary) take the following actions:

- Make loans to, or purchase any debt obligation of, the covered financial company or any covered subsidiary;
- Purchase assets of the covered financial company or any covered subsidiary directly or through the entity established by the Corporation for such purpose;
- Assume or guarantee the obligations of the covered financial company or any covered subsidiary to one or more third parties;
- Take a lien on any or all assets of the covered financial company or any covered subsidiary, including a first priority lien on all unencumbered assets of the company or any covered subsidiary to secure repayment of any transactions; and

- Sell or transfer all, or any part thereof, of such acquired assets, liabilities, or obligations of the covered financial company or any covered subsidiary.

The legislation requires amounts expended from the fund by the Corporation to be repaid in full to the fund from the following sources: 1) resolution process—amounts attributed to the proceeds of the sale of, or income from, the assets of the covered financial company. 2) Industry Assessments—Assessments on financial companies.

The legislation gives the Corporation:

- All rights, titles, powers, and privileges of the covered financial company, and of any stockholder, member, officer, or director of such institution with respect to the covered financial company and the assets of the covered financial company.
- Title to the books, records, and assets of any previous receiver or other legal custodian of such covered financial company.

The corporation as a receiver for a covered financial company may:

- Take over the assets of and operate the covered financial company with all the powers of the members or shareholders, the directors, and the officers of the covered financial company and conduct all business of the covered financial company;
- Collect all obligations and money due the covered financial company;
- Perform all functions of the covered financial company in the name of the covered financial company;
- Preserve and conserve the assets and property of the covered financial company; and
- Provide by contrast for assistance in fulfilling any function, activity, action, or duty of the corporation as receiver.

The bill states that there "shall be a strong presumption that the corporation, as receiver, will remove management responsible for the failed condition of the covered financial company."

Systemic Dissolution Fund: The legislation creates a Systemic Dissolution Fund intended to:

- Facilitate and provide for the orderly and complete dissolution of any failed financial company or companies that pose a systemic threat to the financial markets or economy; and
- Ensure that taxpayer funds utilized to facilitate such liquidations are fully repaid from assessments levied on financial companies that have assets of $50 billion or more adjusted for inflation.

The corporation is required to impose a risk-based assessment on financial companies as the corporation deems is necessary to funds the Systemic Dissolution Fund. This "bailout" fund will amount to $150 billion. All financial institutions with assets over $50 billion, and all hedge funds with assets over $10 billion, would be required to pay this fee.

Diversity in Agency Workforce: The legislation requires every financial agency to, within 180 days, establish an Office of Minority and Women Inclusion. Per the bill, the office would be required to advise the agency administrator on the impact of policies and regulations on minority-owned and women-owned businesses. The office would also be responsible for all matters of the agency relating to diversity in management, employment, and business activities.

Per the legislation, the President would appoint (subject to Senate confirmation) a Director of Minority and Women Inclusion to act in a managerial capacity and report directly to the agency administrator. The Director would be required to:

- Ensure equal employment opportunity and racial, ethnic, and gender diversity of the agency's workforce and senior management;
- Increase the participation of minority-owned and women-owned businesses in the programs and contracts of the agency;
- Provide guidance to the agency administrator to ensure that the policies and regulations of the agency strengthen minority-owned and women-owned businesses; and
- Conduct an assessment, as part of the examination process for the entities regulated or monitored by the agency of the diversity and inclusion efforts by such entities.

The legislation would require each agency to consider the race, ethnicity, and gender of an applicant in reviewing and evaluating contract proposals.

The legislation requires agencies to:

- Give preferences in recruiting efforts at historically black colleges and universities, Hispanic-serving institutions, women's colleges, and colleges that typically serve majority minority populations;
- Sponsor and recruit at job fairs in "urban communities, and [place] employment advertisements in newspapers and magazines oriented toward women and people of color;"
- Partner with organizations that are focused on developing opportunities for minorities and women to place talented young minorities and women in industry internships, summer employment, and full-time positions; and
- Partner with inner-city high schools, girls' high schools, and high schools with majority minority populations to establish or enhance financial literary programs and provide mentoring.

International Policy Coordination: The legislation requires the President (or a designee) to coordinate through all available international policy channels related to "limiting the scope, nature, size, scale, concentration, and interconnectedness of financial companies in order to protect financial stability and the global economy."

Federal Reserve Audit: The legislation includes an amendment offered by Rep. Paul (R-TX) in committee that allows the Government Accountability Office (GAO) to audit the Federal Reserve Board.

Title II—Executive Compensation

Title II of the bill consists of H.R. 3269 which passed by the House on July 31, 2009 by a vote of 237-185. See here for the RSC Legislative Bulletin. *Highlights* of Title II:

Annual Shareholder Vote on Executive Compensation: The legislation requires an annual, non-binding, shareholder vote to approve the compensation of executives. The Republican Dissenting Views section of the Committee Report notes that, even though this section requires an annual vote, most executive compensation agreements cover more than one year. Consequently, the Garrett substitute offered in committee would have required a triennial vote instead.

The legislation also requires a similar nonbinding vote for compensation that an individual would receive if a company is acquired or merged with another company (what the bill refers to as "golden parachute compensation").

The legislation further requires institutional investment fund managers to report at least annually how they voted on any executive compensation agreement.

This title gives the Securities Exchange Commission (SEC) broad authority to promulgate rules, required within 6 months of enactment, to implement the provisions concerning shareholder votes on executive compensation. The legislation gives the SEC the authority to exempt certain categories of public companies from the reporting requirements of the bill.

The legislation prohibits, except under circumstances specified in the legislation, any compensation that has been approved by a majority of shareholders from being subject to any clawback, and gives the SEC the authority to promulgate rules to implement and enforce this provision.

Compensation Committee: Within 9 months of enactment, the legislation requires the SEC to prohibit the listing of any class of security that is not in compliance with a requirement that each member of the public company's compensation committee *not* receive consulting, advisory, or compensatory fees from the company (other than compensation for being a member of the committee).

The legislation allows the compensation committee to use the services of a compensation consultant, and gives the SEC the authority to promulgate regulations providing "standards of independence." If a company chooses to use the services of such a compensation consultant, the bill requires the company to disclose this. The legislation gives the SEC the authority to exempt certain categories of issuers from this requirement "where appropriate in view of the purposes of this section."

The bill further requires the SEC to conduct a study and report to Congress on the "use of compensation consultants meeting the standards of independence…"

Federal Review of Employee Compensation Practices: Within 9 months of enactment, the legislation requires the "appropriate federal regulators" to prescribe regulations that would require covered financial institutions (including banks, credit unions, broker-dealers, and investment advisors) to disclose to the "appropriate" federal agency the structures of all incentive-based compensation arrangements.

Prohibition of Compensation Arrangements: The bill requires, within 9 months of enactment, that the "appropriate" federal regulators jointly prescribe regulations that prohibit any incentive-based payment arrangement that the regulators determine encourage "inappropriate" risks by covered financial institutions that:

- Could threaten the safety and soundness of covered financial institutions; or
- Could have serious adverse effects on economic conditions or financial stability.

Federal regulators would have very broad authority to determine what compensation arrangements fit this criteria. The legislation provides an exemption for financial institutions with assets of less than $1 billion (per the adoption of an amendment offered by Rep. Hensarling in committee). The legislation requires the Government Accountability Office (GAO) to conduct a study on the correlation between compensation structures and excessive risk-taking.

Title III—Over-the-Counter Derivatives Market Act

Registration and Regulation of Swap Dealers and Major Swap Participants: The legislation requires registration and regulation of swap dealers and major swap participants.

Bank Swap Dealers and Major Swap Participants: Within 180 days of enactment, the legislation requires the prudential regulators in consultation with the SEC to jointly adopt rules imposing capital and margin requirements on swap dealers and major swap participants.

Nonbank Swap Dealers and Major Swap Participants: Within 180 days of enactment, the legislation requires the prudential regulators to jointly adopt rules imposing capital and margin requirements under this subsection for swap dealers and major swap participants for which there is no prudential regulator.

Rulemaking: The legislation requires the SEC and the appropriate federal banking agencies to adopt rules governing reporting and recordkeeping for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

Daily Trading Records: The legislation requires swap dealers and major swap participants to maintain daily trading records of its swaps and all related records.

Authority to Ban "Abusive" Swaps: The legislation allows the SEC and CFTC to, by rule, issue a report on types of swaps that that the agencies determines are "detrimental to the stability of a financial market or of participants in a financial market."

International Harmonization: The legislation requires the SEC, the CFTC, the prudential regulators, and the financial stability regulator to consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of swaps.

Authority to Ban Access to the United States Financial System: The legislation allows the CFTC or the SEC, upon a determination that the regulation of security-based swaps markets in a foreign country undermines the stability of the U.S. financial system to prohibit an entity domiciled in that country from participating in the United States in any swap activities.

Registration and Regulation of Swap Dealers and Major Swap Participants: The legislation requires registration of security-based swap dealers/participants.

Capital and Margin Requirements: The legislation requires security-based swap dealers/participants to meet minimum capital requirements, and minimum margin requirements, as prescribed by the prudential regulators. Margin is the collateral a company must deposit to cover the credit risk of the broker or counterparty.

Title IV—Consumer Financial Protection Agency Act

Title IV of the bill establishes a new bureaucracy, the Consumer Financial Protection Agency (CFPA). Committee Republicans note that this proposes *"one of the largest delegations of authority to a single unelected bureaucrat in our nation's history."* For an RSC Policy Brief on the CFPA, see here.

Highlights of Title IV:

Consumer Financial Protection Agency (CFPA): The bill creates a new Consumer Financial Protection Agency (CFPA), which will be an independent agency of the federal government that would have unlimited authority to regulate any financial product that could potentially be unfair, deceptive, or abusive to a consumer. The CFPA proposal is similar in some respects to the Consumer Protection Agency proposed by Ralph Nader and defeated by a Democrat Congress in the 1970s (see this link for more information). More recently, Elizabeth Warren, Chair of the Congressional Oversight Panel for the TARP legislation, has been a chief proponent of the concept (and the potential head of the agency if enacted). The intent of the CFPA concept is to consolidate federal financial regulatory agencies into the proposed Consumer Financial Protection Agency (CFPA).

The CFPA Director would be appointed by the President (subject to Senate approval) and serve a five-year term. The legislation also creates a 7-member Consumer Financial Protection Oversight Board to advise the Director on various matters, with an additional five members of the Board to be appointed by the President (with the approval of the Senate). The bill establishes criteria for who is qualified to be selected among these five members of the Board: experts in the fields of consumer protection, fair lending and civil rights, representatives of depository institutions that primarily serve underserved communities, etc.

The CFPA would have very broad authority in at least two respects. First, it would cover a broad range of financial service industries. Any business which provides loans, credit, or repayment plans would be regulated, including: doctors and hospitals, student loans, defined-benefit pension plans, merchants and retailers, realtors, consumer credit reporting agencies, telephone service providers, advertising agencies, publishers, and cable and satellite TV companies. Second, the legislation would also leave most future regulations to the discretion of the CFPA instead of prescribing specific regulations.

The CFPA regulations would NOT preempt state regulations. In other words, the resulting regulations would be the floor, not the ceiling.

Funding of CFPA: The Board of Governors will transfer 10% of the Federal Reserve System's total system expenses to the CFPA to carry out its functions. The legislation would also assess fees on financial companies for examinations and enforcement. The legislation authorizes spending (subject to appropriation) of "such sums" for the CFPA.

Victims Relief Fund: The legislation establishes a "Victims Relief Fund" to be derived from judgments against entities that violate this act, and to be used to for payment to victims of the activities for which the penalties have been assessed.

Title V—Capital Markets

Private Pools of Capital: The legislation requires private advisers at hedge funds and private equity firms managing assets over $150 million to register with the SEC (venture capital firms exempted). The bill establishes new data collection and reporting requirements for these companies that may interfere with confidential and proprietary information.

Credit Rating Agency Reform: The legislation requires private advisers at the SEC to review credit ratings issued by Nationally Recognized Statistical Rating Organizations (NRSRO) so they follow documented internal controls and manage conflicts of interest when determining credit ratings. For the first time, the legislation opens credit rating agencies up to liability from any individual who may feel misled by a rating—a boon for trial lawyers.

Investor Protection Act: The legislation contains miscellaneous reforms requested by the Securities and Exchange Commission (SEC), Public Company Accounting Oversight Board (PCAOB), and Securities Investor Protection Commission (SIPC). The legislation creates an Investor Advisory Committee to advise and consult with the SEC on:

- Regulatory priorities and issues regarding new products, trading strategies, fee structures and the effectiveness of disclosures;
- Initiatives to protect investor interest; and
- Initiatives to promote investor confidence in the integrity of the marketplace.

Whistleblower Incentives/Investor Protection Fund: H.R. 4173 allows payments of up to 30% of the total civil penalties for individuals who provide information that leads to the penalty.

The bill further establishes a "Securities and Exchange Commission Investor Protection Fund" for paying awards to whistleblowers, as well as for funding investor education initiatives designed to help investors protect themselves against securities fraud.

Nation-Wide Service of Subpoenas for SEC: Includes the text of H.R. 2873, the Enhanced S.E.C. Enforcement Authority Act, which passed the House by voice vote on December 2, 2009. This legislation amends the Securities Act of 1933 and the Investment Advisers Act of 1940 to grant the Securities and Exchange Commission (SEC) nationwide service of subpoenas in civil actions brought by the SEC in federal courts. For the RSC Legislative Bulletin on this bill see here.

Doubling of SEC Authorized Spending Levels: The legislation authorizes (subject to appropriation) a doubling of the SEC's budget by 2015, as follows:

- FY 2010, $1.1 billion
- FY 2011, $1.3 billion
- FY 2012, $1.5 billion
- FY 2013, $1.8 billion
- FY 2014, $2.0 billion
- FY 2015, $2.3 billion

Grants to States for Fraudulent Marketing Mitigation: The legislation creates a program to provide grants to states to investigate and prosecute misleading and fraudulent marketing practices, or to develop educational materials and training aimed at reducing misleading and fraudulent marketing of financial products toward seniors. The maximum grant would be set at $500,000. The legislation authorizes (subject to appropriation) $40 million over five years ($8 million annually) for this purpose.

Title VI—Federal Insurance Office

Federal Insurance Office: The legislation establishes a Federal Insurance Office (FIO) within the Department of the Treasury. The FIO will be responsible for monitoring systemic risk in the insurance industry. The FIO will also be permitted to negotiate international agreements related to insurance. The FIO would be required to do a report on the global reinsurance market, as well as a study on the modernization and improvement of insurance regulation in the United States.

Conservative Concerns with H.R. 4173: This legislation perpetrates the endless bailouts, kills jobs, and creates a command-and-control financial system for America. Conservatives have expressed numerous concerns with this bill, including, but not limited to:

Negative Impact on Economy: The legislation is another element of the Democrat agenda that will place new costs on businesses. The legislation will ration capital and credit, and place newred-tape on job creators, leading to further job losses.

Harm to Small Businesses: The legislation will exacerbate the credit crunch for small businesses, who will have more difficulty accessing necessary credit because they would be required to pay fees to the government to bailout their competitors.

Wage Controls: H.R. 4173 allows regulators to determine compensation of all employees (not just executives) at financial institutions.

Permanent Bailout Fund: The legislation creates a pre-funded $150 billion bailout fund which is paid for by all financial institutions with assets over $50 billion and hedge funds over $10 billion.

Delegates Very Broad Authority to Federal Regulators: The legislation gives federal regulators *very* broad authority to carry out and to promulgate regulations for the provisions of the legislation. The shape of the regulations that will result, and the cost this will impose on the private-sector, is unknowable. Many conservatives may believe that Congress should not delegate such vast authority to unelected regulators.

Creates New Consumer Financial Protection Agency: The CFPA would have very broad authority in at least two respects. First, it would cover a broad range of non-traditional financial services industries. Any business which provides loans, credit, or repayment plans would be regulated, including: doctors and hospitals, student loans, defined-benefit pension plans, merchants and retailers, realtors, consumer credit reporting agencies, telephone service providers, advertising agencies, publishers, and cable and satellite TV companies. Second, H.R. 4173 leaves most future regulations (in title IV of the bill) to the discretion of the CFPA, instead of prescribing specific regulations.

Does NOT Include Needed Reforms of Fannie Mae and Freddie Mac: The legislation does NOT make needed reforms of the GSEs (such as contained in H.R. 7094 from the 110th Congress, the Government-Sponsored Enterprises Free Market Act).

Cost to Taxpayers: According to CBO, the legislation increases revenues by $3.1 billion over ten years, and reduces direct spending by $4.2 billion over ten years. This counts $10.4 billion in CBO-scored savings from a $20.8 billion reduction in TARP authority. Many conservatives may consider this to be a budget gimmick, since the savings would have likely been realized absent this provision. The impact of the legislation on authorized discretionary spending is unavailable.

Committee Action: The legislation was introduced on December 2, 2009. The legislation is made up of various other bills that were previously considered by the Financial Services Committee.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill delegates vast authority to federal regulators that will lead to burdensome regulations on the private-sector. At every point, the philosophy of this bill is to put more power in the hands of the federal government, and to weaken our free-enterprise system.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes, the legislation contains numerous new mandates on state and local governments, as well as the private-sector. CBO states that the private-sector mandates would exceed the threshold under the Unfunded Mandates Reform Act (UMRA) of 1995 ($139 million in 1995). CBO states that it cannot determine whether the legislation's mandates on state- and local-governments would exceed that threshold ($69 million in 2009), since that would depend on the resulting regulations.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No committee report citing potential earmarks is available.

Constitutional Authority: No committee report citing constitutional authority is available.

Outside Groups Urging a "No" Vote:

Note: This is not an exhaustive list.

American Bankers Association
American Financial Services Association
Americans for Prosperity
Americans for Tax Reform
Consumer Bankers Association
Council on Citizens Against Government Waste
Financial Services Roundtable
Mortgage Bankers Association

RSC Staff Contact: Brad Watson, brad.watson@mail.house.gov, (202) 226-9719